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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,499	02/20/2004	George Gustave Zipfel JR.	Zipfel 1	7599

7590 12/07/2006
Ronald D. Slusky
353 West 56th St.-Suite 5L
New York,, NY 10019-3775

EXAMINER

SHINGLETON, MICHAEL B

ART UNIT PAPER NUMBER

2817

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/783,499	Applicant(s) ZIPFEL ET AL.	
Examiner Michael B. Shingleton	Art Unit 2817	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

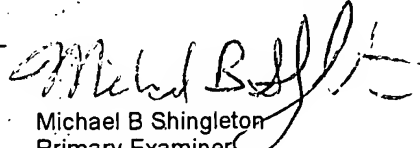
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Attached PTO-892


Michael B Shingleton
Primary Examiner
Group Art Unit 2817

Continuation of 11. does NOT place the application in condition for allowance because: Applicant believes that the limitation "the sum of the values of the current through said each load is substantially constant" is not taught by the prior art. The examiner respectfully disagrees. Applicant also states "Applicant claims still do not read on Prokin because neither the instantaneous, nor the average current in Prokin is "substantially constant". The examiner does not know how applicant can make such a statement that the average current is not constant for the average current is a constant for it is an "average" over time. Furthermore this believe that the average current is not a constant is not what is being claimed. What is being claimed in at least claim 1 is the above statement concerning the summ of current through each load being a constant. Therefore applicant's arguments are not on point.

Furthermore, again the examiner believes that the applicant is reading terms and function into the claims that are not present. It appears that applicant is reading the claims in much too narrow a light. Contrary to commonly accepted definition which will be clear below. Also no specific definitions are given by applicant in the original disclosure of these terms that it appears that applicant is reading in a light from that commonly accepted.

Let's start with what is a "current" as current is a measurement of electricity. Many dictionary definitions, two of which are attached to this office action point out that a current is the "flow" of electricity measured in Amperes. "Flow" is a quantity, i.e. a measurement. Think of flow like how fast the river is flowing. It is the water in the river that is flowing, that is the physical element. How fast it is flowing is a measurement. Current is a measurement of the flow of electricity. Average current likewise is the average flow of electricity measured in amperes. Average current is a specific form of current just as the DC current is a specific form of current. At least claim 1 is not specific on the type of current and thus the applicant is correct that the examiner must give the broadest reasonable interpretation to the claims (See MPEP 2111). The only reasonable interpretation of the claims is that since the claims are not specific on the type of current meant then if any current that has the function recited and appears in the prior art this prior art will then read on the claims. Again "current" is a measurement of electricity flow and it is not the electricity itself. Here is where applicant reads the terms contrary to the accepted definition of the terms. Applicant implies with the statement "There is no such physical thing as an "average" current" that "current" by itself is a physical thing. Actually current as pointed out above is a measurement of flow of electricity and not the physical element that makes for electricity i.e. the electrons and holes. Current signifies the speed and average current signifies a speed or flow just as DC current signifies a speed or flow. It appears that applicant is confusing the physical elements that make up electricity with the terms that are measurements of electricity like current and voltage. It also depends on how applicant is trying to define "physical". If the measurement "instantaneous current" is a "physical" thing, then most certainly DC current is physical and average current is physical and the units is amperes. If physical means that this measurement value is a way to describe the effect of electricity on a circuit then most certainly here too average current and DC current will have an effect on a circuit. What does applicant mean by "physical current". This term does seem to be defined in the original disclosure.

The examiner has noted many times to applicant that the claims are very functional in nature with very little if any supporting claimed structure. MPEP 2114 is very specific that a claim drawn to structure must be distinguished by claimed structure. The examiner's point is that the claimed invention is very broad. The limitation that the sum of the current through each load is a constant is practically meaningless for an average current is a constant and the sum of two constants is a constant. Applicant is claiming a mathematical exercise rather than a positive structure. The examiner believes that patentable distinguishing structure is needed to be claimed in order to overcome the art record in accordance with MPEP 2114.

Continuation of 13. Other: Note that one month extension of time as paid for on 11-10-2006..